

Budget Overview

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Various funds of the State of West Virginia are subject to direct appropriation by the Legislature and are specifically included in the appropriations (budget) bill submitted by the Governor to the Legislature for their consideration and final passage of a budget.

The funds that are subject to appropriation by the Legislature are separated into five generally accepted categories:

- * General Revenue Fund
- * State Road Fund
- * Lottery Funds
- * Federal Funds
- * Special Revenue Funds

The **General Revenue Fund**, or General Fund, consists primarily of the major tax revenue of the state such as Consumer Sales Tax and Use Tax, Personal Income Tax, Business and Occupation Tax, Corporate Net Income Tax/Business Franchise Tax, Insurance Tax, and Severance Tax. These taxes comprise approximately 91.9 percent of the General Revenue Fund. The remaining 8.1 percent of the General Revenue Fund is a combination of lesser taxes such as Cigarette Tax, Estate Tax, and Charter Tax, along with fees such as Racing Fees, Liquor Profit Transfers, and transfers from lottery revenues.

All expenditures from the General Revenue Fund must be appropriated by the Legislature. The appropriations from the General Revenue Fund expire at the end of the state's fiscal year on June 30, except as otherwise provided. Bills may be paid through July 31 for obligations that were incurred on or before June 30 of the expiring fiscal year. The Legislature may reappropriate any General Revenue Fund account by adding language in the Budget Act that allows any unexpended balances to be carried forward and expended in the following fiscal year. For capital outlay appropriations, Chapter 12, Article 3, Section 12 of the West Virginia Code states that "appropriations for buildings and land or capital outlay shall remain in effect, and shall not be deemed to have expired until the end of three years . . ."

The **State Road Fund** consists of revenues from gasoline and other motor fuel excise and license taxes, motor vehicle registration and license tax, and all other revenue derived from motor vehicles or motor fuel. The State Road Fund is appropriated by the Legislature and used solely for construction, reconstruction, repair and maintenance of public highways, the payment of the interest and principal on all road bonds, and the administrative expenses of the Division of Highways and the Division of Motor Vehicles.

All federal funds received for road construction, reconstruction, and maintenance are also deposited into and become part of the State Road Fund.

Only two agencies, the Division of Highways and the Division of Motor Vehicles, receive appropriations from the State Road Fund.

Lottery Funds consist of funds derived from the sale of lottery tickets or games and limited video lottery. House Bill 102 passed in 2001 provided for changes in the Lottery Act and Racetrack Video Lottery Act as well as the creation of the Limited Video Lottery Act. In addition, House Bill 102 created an Excess Lottery Fund and stipulates to which fund lottery profits are to be directed; the already existing Lottery Fund or the Excess Lottery Fund.

The Lottery Fund may be used to support the operation of the West Virginia Lottery, including expenses and prizes. The net revenue from the Lottery must be appropriated by the Legislature. Currently, the Lottery Fund may only be expended for education, senior citizens, and tourism and parks.

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The Excess Lottery Fund may be used for PROMISE scholarships, senior citizen tax credits, the School Building Debt Service Fund, the West Virginia Infrastructure Fund, Economic Development Project Fund, Higher Education Improvement Fund, State Park Improvement Fund, and the General Purpose Account.

Lottery Funds are, by law, considered Special Revenue Funds and are included in the Appropriated Special Revenue Fund column on the “Combined Statement of Revenues, Expenditures, and Changes in Fund Balances for Appropriated Funds” in the “Financial Statements” section of this document.

Federal Funds consist of any financial assistance made directly to any state department/bureau/commission/division by the United States government, whether a loan, grant, subsidy, augmentation, reimbursement or any other form of such assistance, including federal matching funds.

As required by Chapter 4, Article 11, Section 6 of the West Virginia Code, Federal Funds must be included in the Budget Act and appropriated by the Legislature with the following exceptions:

- Federal Funds received by state institutions of higher education or by students or faculty members of such institutions for instructional or research purposes and federal funds received for student scholarships or grants-in-aid
- Federal nondiscretionary pass-through funds that are earmarked in specified amounts or appropriations for transmittal to local political subdivisions or to designated classes of organizations and individuals which do not require state-matching funds and do not permit discretion in their distribution by the receiving state spending unit.
- Federal Funds made available to the state for costs and damages resulting from natural disasters, civil disobedience, or other occurrences declared by the Governor as a state of emergency.
- Federal Funds received by the West Virginia Division of Highways or the West Virginia Commissioner of Highways.

Special Revenue Funds consists of individual accounts created for a specific purpose and may be expended only for that specific purpose unless otherwise directed by the Legislature. These accounts generate revenue derived from established rates or fees for services provided either to the public, other state agencies, or nonstate governmental entities. These accounts are generally “from collections” and the spending is limited to the amount collected or the amount appropriated by the Legislature, whichever is less. Proprietary funds and trust funds are included in the budget as Special Revenue Funds.

Certain special revenue accounts are specifically appropriated by the Legislature and included in the Budget Act. Other special revenue accounts, generally referred to as “nonappropriated,” are not specifically appropriated and are not included in the Budget Act. These nonappropriated Special Revenue accounts derive their authority to expend funds from general law and language contained in the Budget Act for that particular fiscal year.

Special Revenue accounts that are specifically appropriated in the Budget Act expire on June 30, and bills may be paid through July 31 in the same manner as General Revenue Funds. Appropriated Special Revenue accounts may also be reappropriated into the next fiscal year in the same manner as General Revenue accounts. Nonappropriated Special Revenue accounts do not expire but continue forward with the next fiscal year provided the requirements of general law are met.

All funds of the State of West Virginia fall into one of the above categories and are subject to legislative review and oversight.

Basis for Budgeting All Funds

The State's annual budget is prepared on a cash basis, a statutory basis of accounting not in conformity with generally accepted accounting principles (GAAP), modified only at year-end to allow for a 31-day period for the payment of obligations incurred in that fiscal year. The cash basis means that all revenue is recognized when actually received and that expenditures are recognized when paid.

Budgeted general government activities are summarized into the following budgetary funds: General Revenue Fund, State Road Fund, Federal Funds, and Special Revenue Funds. As required by Chapter 11B, Article 2, Section 4 of the West Virginia Code, the budget for each department/bureau/commission/division shall show all funds including those from regular and supplementary appropriations, federal funds, private contributions, transfers, allotments from an emergency or contingency fund, and any other expenditure made by or for the spending unit.

Because all funds available to a department/bureau/commission/division are included and presented as part of their total budgets, enterprise funds and other transfers may be "double-counted" in the budgets of several different spending units. Since the budgetary basis differs from GAAP, this causes the budgetary figures to exceed the amounts contained in the state's Comprehensive Annual Financial Report (CAFR) by over \$1 billion.

The State's CAFR presents the State's finances in conformity with GAAP for governments. GAAP requires that the State's Proprietary Funds apply GAAP in a similar manner as applied to business activities in the private sector. The Governmental Accounting Standards Board (GASB) is the accepted standard-setting body for governmental and financial accounting.

The Executive Budget Process Policy

The budget process begins approximately one year prior to the beginning of the fiscal year for which appropriations are being made. The state fiscal year begins July 1 and ends on June 30.

The Secretary of Revenue, along with the Governor's Office and the State Budget Office, develops guidelines to be used by the various spending units when submitting their appropriation (Budget) requests that are due by law on September 1. These guidelines establish a "current level" or base budget for each department/bureau/commission/division.

For FY 2006, the "current level" for the General Revenue Fund and regular Lottery Fund is defined as 94.5% of the funds the department/bureau/commission has for the current fiscal year (FY 2005) less any one time appropriations. The FY 2006 appropriation request with a 5.5% budget reduction is necessary to allow the State to provide additional funding for some critical areas such as the state retirement systems, public employees insurance, Medicaid, and the operation of several new correctional and juvenile facilities. Even though revenues are increasing, the additional expenditures exceed the additional revenue and will be offset by the reductions in various agencies. Several agencies were exempted from the 5.5% reduction including debt service, State Aid to Schools, Public Defender Services, Children's Health Insurance Agency, Department of Revenue, Bureau of Senior Services, Medical Services (Medicaid), Department of Military Affairs and Public Safety, along with several other areas and programs deemed inappropriate to participate in the reduction.

For all other appropriated accounts, the "current level" for FY 2006 is defined as the same amount of funds the department/bureau/commission/division has for the current fiscal year (FY 2005) less any one time appropriations. For the budget request, the department/bureau/commission/division is permitted to move funds between appropriations and programs, within an agency; however, there can be no increase in the total request over the current year's appropriation with the exception of allowable increase for premium payments to the Public

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Employees Insurance Agency and the Board of Risk and Insurance Management or statutory increases for the Department of Education. The “current level” request allows department/bureau/commission/division heads to redirect their limited amount of resources to the highest priority areas without an increase in their total budget.

All appropriation requests that are above the “current level” must be submitted as a separate “improvement package” stating what the additional funding will accomplish, how it will be expended, and justifying the need for the additional funds. Each such improvement above the “current level” is considered individually.

When these requests are received on September 1, they are reviewed by the Secretary of Revenue and the State Budget Office, and budget hearings are generally held with the departments/bureaus/commissions/divisions to discuss their requests. During these budget hearings, the departments/bureaus/commissions/divisions have the opportunity to provide the Governor’s Office and the Department of Revenue with additional information to support their requests, answer questions, and bring to the forefront any specific needs such as legislative or federal mandates or court ordered funding.

This is also the time any future capital projects and funding options are discussed in general terms. All the departments/bureaus/commissions are required to submit capital expenditure plans with their appropriation requests. These show the projects budgeted for the current fiscal year, requested for the next fiscal year, and estimated for the following five years. This allows the state to plan for future capital needs with sound financial planning.

When the hearings are completed and the revenue estimates are determined for the budget year, the Governor makes budget recommendations based upon program priorities, requirements, court orders, and the availability of funding. The Governor, under the authority of the Constitution of West Virginia, has the sole responsibility to establish the official revenue estimates of the State. The budget is developed on a cash basis, including only revenues and expenditures expected to be realized during the fiscal year plus any surplus balances available for appropriation, but the Governor is not legally required to submit a balanced budget. However, as a matter of practice, the Governor submits a budget that is balanced.

The Constitution of West Virginia requires the Governor to submit a proposed budget to the Legislature on the second Wednesday of January of each year, except the year following a gubernatorial election, at which time the budget is to be submitted on the second Wednesday of February.

The Governor’s Executive Budget consists of the Operating Detail, the Budget Report, and the Budget Bill. The Operating Detail contains organizational charts, descriptive narrative information for every department/bureau/commission, division, and program, detailed financial information related to actual expenditures, current budget, and requested appropriations by program and by fund. The Budget Report contains the executive message, a budget plan, economic forecast, capital projects, federal programs, and a profile of the State. The Budget Bill includes the language required to legally enact the budget or appropriations bill.

The Operating Detail and the Budget Report both contain summary financial statements that include the official estimate of revenues for the state along with available fund balances, actual prior year expenditures, current year budgeted amounts, and the Governor’s recommendations for the next fiscal year.

The Legislative Budget Process Policy

After the Executive Budget is presented by the Governor to the Legislature, it is referred to the House of Delegates (House) and Senate Finance Committees for their review and consideration. Each finance committee also holds budget hearings with the departments/bureaus/commissions/divisions to determine their recommended level of funding for the upcoming fiscal year. The House and Senate Finance Committees will each pass a Budget Bill and

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present it to their respective legislative bodies for full approval. Once the House and Senate have passed their individual bills, they are compared with each other and the differences are noted. The Budget Bills are then referred to the Budget Conference Committee which is made up of members appointed from the House and Senate Finance Committees. The Conference Committee works out any differences, agrees to a single budget and, once again, presents it to their respective legislative bodies for full approval.

The Legislature is legally required to pass a balanced budget, meaning that estimated revenues and unappropriated fund balances must be equal to or greater than the appropriations.

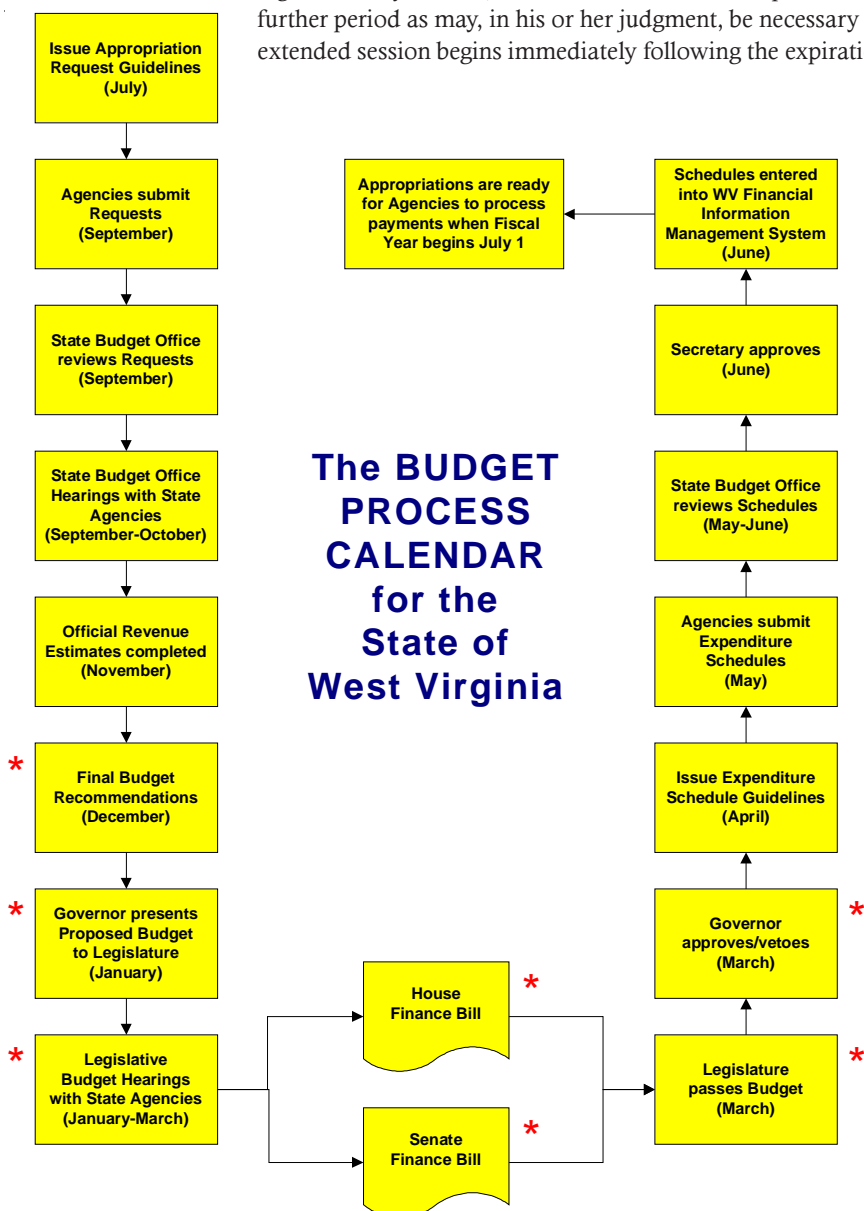
If the budget has not been passed by the Legislature three days before the expiration of its regular 60 day session, the Governor shall issue a proclamation extending the session for such further period as may, in his or her judgment, be necessary for the passage of the Budget. The extended session begins immediately following the expiration of the regular 60 day session.

During the extended session, no bills or matters other than the budget may be considered, except a bill to provide for the cost of the extended session.

The Budget Bill must be passed by a majority of the members of each legislative body and presented to the Governor. The Governor may veto the bill or disapprove or reduce items or parts of items. If approved, it becomes law. Items or parts disapproved or reduced by the Governor are returned, stating the objections, to each house of the Legislature.

Upon passage by the Legislature, the Budget Bill becomes the Budget Act and appropriates, by spending unit, the funds required to operate state government for the next fiscal year.

Any Budget Act items or parts thereof which have been vetoed by the Governor may be restored by two-thirds vote of each house of the Legislature. The Budget Act must be approved or disapproved within



* Following a gubernatorial election, these steps in the budget process are delayed by one month.

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five days (Sundays excepted) after it has been presented to the Governor. Should the Governor fail to approve or disapprove it within the allotted five-day period, the Budget Act will become law as if the Governor had signed it.

After the Legislature has passed a budget, W.Va. Code Chapter 4, Article 1, Section 18 directs that a digest or summary of the Budget Bill be prepared at the direction of and approved by the members of the Conference Committee on the Budget Bill. The Conference Committee on the Budget must approve the Budget Digest in a meeting open to the public.

The Budget Digest does not carry the force and effect of law and it does not appropriate any money from the state treasury. However, the Budget Digest does contain recommendations developed by the Conference Committee that reflect, in its judgment, the intent of members of the Legislature, as to how certain Budget Bill appropriations should be expended. However, no such recommendation contained in the Budget Digest should be construed as legally binding.

Budget Amendment Policy

The Budget Act may be amended at a later date by the Legislature by the introduction of a supplementary appropriation bill. Each supplementary appropriation bill must be for a single purpose or object and shall provide the source of revenue necessary to pay the appropriation unless there is sufficient revenue currently available.

A supplementary appropriation bill will generally be introduced in either the House or Senate Finance Committees by a member or members of the committee. The Governor may also request a member of the Legislature to introduce a supplementary appropriation bill "By Request of the Executive." A supplementary appropriation bill may increase or decrease the current appropriation, create a new appropriation, or otherwise amend the Budget Act by changing or correcting language that directs the expenditure of appropriations.

A supplementary appropriation bill must follow the same procedures and requirements necessary to adopt the original budget.

In addition to the legislative amendment process, the Budget Act contains specific language allowing:

- Department secretaries the authority to transfer not more than 25% of any General Revenue appropriation between various agencies within the department or bureau.
- Any spending unit to transfer "personal services" and "employee benefits" to other appropriations within the same account.
- Any spending unit in any fund to transfer "personal services" and "unclassified" to "employee benefits."
- The Budget Bill also requires the payment for the Board of Risk and Insurance Management (BRIM) premiums and payments for employee benefits to be paid or transferred from various sources should the appropriations be insufficient.

The Commissioner of the Division of Corrections has specific authority to transfer funds between items appropriated to the individual correctional units and from the individual correctional units to "Payments to Federal, County, and/or Regional Jails" or "Inmate Medical Expenses."

The Director of the Division of Juvenile Services has specific authority to transfer funds between items appropriated to the individual juvenile centers.

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The Secretary of the Department of Health and Human Resources may also transfer up to 5% of funds appropriated to one item to another item(s) within the Division of Human Services provided, however, that funding for “Personal Services” (salaries) may not be increased.

The Legislative and Judicial branches of government may make other transfers as adopted in the joint rules of the Legislature and the rules of the Supreme Court.

Appropriated Special Revenue accounts and Federal Fund accounts may be increased by the Governor as authorized by the West Virginia Code.

Chapter 11B, Article 2, Section 18 of the Code authorizes the Governor to increase the spending authority for accounts which are funded “from collections” (Special Revenue) provided the amount actually collected exceeds the amount authorized for expenditure by the Legislature.

The spending officer must submit a plan of expenditure showing the purpose for which the funds are to be expended and a justification statement showing the reasons why the additional expenditure is necessary and desirable.

If the Governor approves the plan of expenditure and justification statement and is satisfied the expenditure is required to defray the additional cost of the service or activity of the spending unit, the Governor may authorize the use of the additional funds. Notices of such authorization are sent to the State Auditor, the State Treasurer, and the Legislative Auditor.

Chapter 4, Article 11, Section 5 of the West Virginia Code authorizes the Governor to increase the spending authority for federal accounts.

If additional Federal Funds become available to the spending unit while the Legislature is not in session and the availability of such funds could not reasonably have been anticipated and included in the budget approved by the Legislature, the Governor may authorize, in writing, the expenditure of such funds in the same manner as Special Revenue funds described above. However, the Governor may not authorize the expenditure of such funds received for the creation of a new program or for a significant alteration of an existing program. A mere new source of funding of federal moneys for a program that has been approved by legislation is not considered a new program or a significant alteration of an existing program, and the Governor may authorize the expenditure of such funds.

The Governor submits to the Legislative Auditor two copies of a statement describing the proposed expenditure of such funds in the same manner as it would be described in the state budget and explain why the availability of such Federal Funds and why the necessity of their expenditure could not have been anticipated in time for such expenditures to have been approved as part of the adopted budget.

Budget Summary – Fiscal Year 2006

In preparing the FY 2006 budget, the preparation of which actually started in July 2004, the General Revenue Fund collections were anticipated to grow at a rate of approximately 5.7%. However, since \$56.4 million in “one-time funds” from special revenue transfers would not be available in FY 2006, the adjusted increase in General Revenue was approximately 3.8% or approximately \$116 million. However, as has been the case in past years, required expenditures were once again projected to grow faster than revenues. Additional necessary funding for the State’s retirement systems, public employees insurance, Medicaid, social services, correctional and juvenile facilities, education scholarships and grants, funding to restore some one-time reductions, and funding to continue programs previously funded from one-time revenue or surplus appropriations.

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The total increases were originally projected to be approximately \$242 million over the FY 2005 appropriations leaving a projected shortfall of \$126 million. To help offset this projected shortfall, Governor Wise instructed state agencies to reduce their "Current Level" appropriation request by 5.5% in General Revenue and Lottery Funds. Many programs deemed the highest priority were exempt from the reduction. The exemptions are debt service, State Aid to Schools, Children's Health Insurance Agency, Department of Military Affairs and Public Safety, Bureau of Senior Services, Medicaid, Department of Revenue, Division of Miners Health, Safety and Training, Board of Coal Mine Health and Safety, Coal Mine Safety and Technical Review Committee, and Public Defender Services.

As the fiscal year progressed the economy proved to be somewhat better than originally projected mainly due to higher energy prices reflected in Severance Tax collections, better than expected Corporation Net Income/Business Franchise Taxes, and greater than anticipated employment growth resulting in stronger Personal Income Tax collections. By January 2005, the overall revenue outlook for FY 2006 was brighter allowing some budget restorations to be made in areas that were originally reduced.

Also, in January 2005, Senate Bill 1004 was passed at the request of Governor Manchin which addressed the unfunded liabilities in the Workers' Compensation Fund. As one of the funding measures, \$30 million in FY 2006 and \$45 million thereafter was directed from Personal Income Tax collections into the Workers' Compensation Debt Reduction Fund. Even with this transfer, the revenue estimate for FY 2006 is now anticipated to be \$168.9 million over the FY 2005 revenue estimate.

Governor Manchin also recommended three revenue measures that would add \$22 million in revenues to the amount available for FY 2006. The changes are 1) eliminate the capital company tax credit - \$10 million, 2) decouple from the federal tax change regarding the new deduction for domestic manufacturing income - \$10 million, and 3) nonrenewal of the sales tax holiday - \$2 million.

The increase in base revenues of \$168.9 million plus \$22 million of proposed revenue measures, along with the 5.5% budget reduction and the reduction of "one-time" appropriations and various other miscellaneous reductions totaling \$64 million provided \$255 million available to address priority budget areas.

From the funds available for FY 2006, the major new recommendations included in the Governor's Executive Budget are as follows:

- * Funding for public employees and public education health insurance
- * Funding for state agency increases to the Board of Risk and Insurance Management
- * Funding for Medicaid and Social Service programs
- * Funding for higher education scholarships
- * Funding for statutory salary increases in public education
- * Funding for increased operational and educational expenses at new or expanded correctional and juvenile facilities

In addition to the 5.5% budget reductions to General Revenue and Lottery Funds mentioned above, in preparing the FY 2006 budget recommendations, the spending authority (budget) of most Special Revenue administrative accounts were also reduced by the same 5.5% amount. This was done in order to treat most operational accounts in the same manner and to some degree, lessen the disparity between General/Lottery and Special Revenue agencies.

Major Reserve/Stabilization Accounts and Other Items

Revenue Shortfall Reserve Fund (Rainy Day Fund)

In accordance with Chapter 11B, Article 2, Section 20 of the West Virginia Code passed March 11, 1994, the State has established a Revenue Shortfall Reserve Fund (Rainy Day Fund) beginning with surplus funds available at the close of FY 1994.

The West Virginia Code requires the first 50 percent of all surplus revenues, if any, accrued during the fiscal year just ended be deposited into the fund with the aggregate amount of the fund not to exceed five percent of the total appropriations from the general revenue fund.

Originally, the Revenue Shortfall Reserve Fund could be used only to offset a shortfall in revenues that would otherwise require the Governor to impose expenditure reductions in accordance with Chapter 11B, Article 2, Sections 20, 21, and 22 of the West Virginia Code.

In July 1996, the Code was amended to allow the Legislature to make appropriations from the fund for emergency revenue needs caused by acts of God or natural disasters or for other fiscal needs as determined by the Legislature.

In October 1996, additional legislation was passed that directed the balance of funds in the Broker Litigation Recoveries Fund be transferred to the Rainy Day Fund. The monies in the Broker Litigation Recoveries Fund was generated from proceeds of court actions against brokerage firms responsible for previous investment losses for the state.

Since the fund was created in 1994, a total of \$222.9 million has been deposited into the fund including \$23.2 million from the Broker Litigation Recoveries Fund, and \$143.6 million has been appropriated for flood and drought victim assistance, infrastructure, snow removal and other projects mostly related to snow, flood, or drought damage.

The Legislature also authorized the Governor, by executive order, to borrow funds from the Revenue Shortfall Reserve Fund when revenues are inadequate to make timely payments of the state's obligations. The amount borrowed may not exceed 1.5% of the General Revenue Fund estimate for the fiscal year and shall be repaid to the fund within 90 days of their withdrawal.

Because of an expected cash flow shortfall experienced each year in the first quarter of the fiscal year, the Governor has borrowed from the fund each year since August 1996 in order to pay obligations in a timely manner. The loans were repaid on September 29 or 30 of each year, all within the 90-day limit allowed by law. On December 31, 2004, the balance in the Revenue Shortfall Reserve Fund was \$79,302,478.78.

It should be noted the original legislation creating the Revenue Shortfall Reserve Fund was contained in Chapter 5A of the West Virginia Code under the Department of Administration. Senate Bill 149, passed March 13, 2004 moved budget responsibilities from the Department of Administration to the Department of Revenue and incorporated the responsibility for the Revenue Shortfall Reserve Fund into the newly created Chapter 11B of the West Virginia Code.

Income Tax Refund Reserve Fund

In accordance with Chapter 11, Article 21, Section 93 of the West Virginia Code, an Income Tax Refund Reserve Fund was established during FY 1990. This fund may be used to pay personal income tax refunds, interest and penalties to taxpayers in a timely manner. It may also be used by the Legislature to make appropriations from the fund to address other items as the Legislature so desires.

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The State Tax Commissioner is responsible for determining the balance needed in the fund to ensure timely income tax refunds.

Since the fund was established in March 1990, \$136.9 million has been deposited into the fund and \$60.4 million has been required to pay income tax refunds and \$45.8 million has been appropriated for flood victim assistance, infrastructure and other projects including medical services payments. On December 31, 2004, the balance in the Income Tax Refund Reserve Fund was \$30,719,318.96 which represents 1% of the total FY 2005 General Revenue Fund.

Medicaid State Share Fund

Medicaid State Share Fund (Health Care Provider Tax) consists of provider taxes paid by the various health care providers to be utilized as matching funds for the Federal-State Medicaid Program. The provider taxes were initially enacted in 1993 as a funding mechanism to help supplement the general fund appropriation for the Medicaid Program. The Federal medical assistance match is roughly \$3 per \$1 of State matching funds. Medicaid State Share Funds are, by law, considered Special Revenue Funds and are included in the Appropriated Special Revenue Fund column on the "Combined Statement of Revenues, Expenditures and Changes in Fund Balances for Appropriated Funds" in the "Financial Statements" section of this document.

Tax Reduction and Federal Funding Increased Compliance (TRAFFIC)

During the 1995 session of the West Virginia Legislature, an initial \$20 million was set aside by appropriation in an account titled Tax Reduction and Federal Funding Increased Compliance (TRAFFIC). This appropriation was made to the Joint Expense account of the Legislative Branch and was intended for possible general state tax reductions, to offset any reductions in federal funding for state programs, or to have funds available for other unanticipated needs. It was not intended as a general appropriation for expenditure by the Legislature.

Since the inception of the TRAFFIC account in 1995, a total of \$58.4 million has been deposited into the account and \$36.0 million has been appropriated from the account, most of which was used for meeting shortfalls in Medicaid match funds or for flood victim assistance. As of December 31, 2004, \$22.4 million remains available for use as the Legislature may determine and an additional \$10 million has been requested for FY 2006.

West Virginia Tobacco Settlement Funds

In accordance with Chapter 4, Article 11A, Section 1 of the West Virginia Code, the Tobacco Settlement Fund and West Virginia Tobacco Settlement Medical Trust Fund were established in June 1999 to receive moneys from the Master Settlement Agreement. Each receipt of moneys is divided and deposited equally between the two funds.

The Tobacco Settlement Fund is available for expenditures of principle and interest by appropriation of the Legislature for the Public Employees Insurance Agency Reserve Fund, expansion of Medicaid, funding of public health programs, services and agencies and funding for any state-owned and operated health facilities. Funds have been used for the PEIA Reserve Fund, state-owned and operated health facilities, and in tobacco cessation programs.

The West Virginia Tobacco Settlement Medical Trust Fund is available for expenditures of interest earnings/returns on investment only by appropriation of the Legislature for the same items identified for expenditure by the Tobacco Settlement Fund. No appropriations have been made from this fund to date. However, by legislation passed during the 2003 Regular Session, the Medical Trust Fund loaned \$24 million to the Board of Risk and Insurance Management Physician's Mutual Insurance Company account for use as initial capital and surplus of the Physician's Mutual Insurance Company to be repaid at \$2.5 million per year from Insurance Tax receipts.

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As of December 31, 2004, a total of \$157,154,058 in principal has been deposited into each fund. Total cumulative interest earnings/investment returns of \$1,797,852 for the Tobacco Settlement Fund and \$39,245,125 for the West Virginia Tobacco Settlement Medical Trust Fund have been deposited into the two funds. Expenditures from the Tobacco Settlement Fund have totaled \$158,624,579 through FY 2004, with an additional \$25,400,000 being appropriated for FY 2005 and recommended for FY 2006.

In January 2004, the Legislature, at the request of Governor Manchin, passed Senate Bill 1004 allowing for the creation of a workers' compensation mutual company and privatization of the workers' compensation program. As part of the dedicated funding established to reduce the unfunded liability in the "old" Workers' Compensation Fund, SB 1004 dedicated the first \$30 million of the Tobacco Master Settlement Agreement funds to the Workers' Compensation Debt Reduction Fund beginning July 1, 2005, and the remainder will continue to be deposited into the Tobacco Settlement Fund to be expended primarily for the operation of state hospitals and tobacco cessation programs. After July 1, 2005, no additional deposits will be made to the West Virginia Tobacco Settlement Medical Trust Fund from revenues received in accordance with the Tobacco Master Settlement Agreement.

The balance in the West Virginia Tobacco Settlement Medical Trust Fund as of December 2004 is \$196,399,183, including the accounts receivable from the Physician's Mutual Insurance Company.

Performance Measurement in the Budget Process

For the tenth consecutive year, state agencies have been required to submit program-level performance measures as part of the appropriation request process. Performance measures are a tool used by all levels of management, as well as the public, to determine whether a program is accomplishing its mission efficiently and effectively. Although every effort is made to provide services at the lowest possible unit, it is most important to ensure the program provides a measurable benefit to the citizens it is designed to serve.

The focus for the FY 2006 performance measures is to show the trend of the program's performance for the three most current fiscal years (FY 2002 to FY 2004) and the performance level goals the program is trying to achieve in FY 2005 and FY 2006 based on current level funding. For FY 2004, both projected and actual performance data is shown to provide information on the success of the agency in meeting their goals. Although most program data is formatted in the State fiscal year (July 1 – June 30), it may be formatted in calendar year (January 1 – December 31), federal fiscal year (October 1 – September 30), or a specific federal program year, depending upon the established guidelines for that particular program. The measures should be in terms of the benefits or impacts a program has on its clients.

During the appropriation request process, it is the intent of performance measurement to encourage cabinet secretaries/agency heads to internally review their programs and make their recommendations to the State Budget Office and the Governor regarding the best use of limited funds. The performance measurement process is not intended to provide information to a central organization, such as the State Budget Office or the Governor's Office, for the central organization to make recommendations on behalf of the agency.

Many grants, federal and other sources, currently require the use of performance measures as a condition to receive the grant funds.

Legislative Performance Review

The Legislature's Performance Evaluation and Research Division (PERD) operates under the authority of the West Virginia Sunset Law, W.Va. Code 4-10-1. The division conducts evaluations of executive agencies in compliance with generally accepted government auditing standards. Results of the evaluations are reported to the Joint Committee on Government Operations during interim sessions of the Legislature.

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The sunset process begins each year when the Legislature passes a bill that sets a schedule of agencies to be reviewed by PERD. The four types of reviews contemplated in the Sunset Law are preliminary performance reviews, full performance evaluations, regulatory board evaluations, and compliance monitoring and further inquiry updates.

Preliminary performance reviews address the following issues: 1) Was the agency created to solve a problem or provide a service? 2) Has the problem been solved or has the service been provided? 3) To what extent have past agency activities and accomplishments, current projects and operations, planned activities and goals for the future been effective? 4) Would there be significant and discernible adverse effects on the public, health, safety or welfare if the agency were abolished? and 5) Does the agency operate in a sound fiscal manner?

Full performance evaluations are more expansive in their scope and are meant to address whether the agency is acquiring, protecting and using its resources efficiently and effectively; whether the agency is complying with laws and regulations; and the extent to which the goals of the Legislature are being achieved.

Regulatory Board Reviews are conducted on Chapter 30 boards that regulate certain professions. There are three primary determinations the evaluation must make:

- Does the board comply with the general policies and provisions of Chapter 30 and other applicable laws and rules?
- Does the board follow a disciplinary procedure that observes due process rights and protects the public interest?
- Does public health and safety require that the board be continued?

Compliance monitoring and further inquiry updates determine if an agency has complied with recommendations contained in a completed full performance evaluation, a completed preliminary performance review, or a regulatory board evaluation.

Upon receiving the evaluation report from PERD, the Joint Committee on Government Operations makes one of several possible recommendations. First, the audited agency may be terminated. Second, the audited agency may be continued and reestablished. Third, the statutes governing the audited agency may be amended in specific ways. Corrective legislation might address ineffective or discriminatory practices or procedures, burdensome rules and regulations, lack of protection of public interest, overlapping or duplicating jurisdictions, unwarranted exercise of authority either in law or in fact or any other deficiencies.

Agencies currently scheduled for review in FY 2006 include:

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|------------------------------------------|----------------------------------|
| • Division of Motor Vehicles | (Full Performance Evaluation) |
| • Family Protection Services Board | (Preliminary Performance Review) |
| • Medical Services Fund Advisory Council | (Preliminary Performance Review) |
| • West Virginia Stream Partners Program | (Preliminary Performance Review) |
| • Ohio River Water Sanitation Commission | (Preliminary Performance Review) |
| • State Lottery Commission | (Preliminary Performance Review) |
| • Whitewater Commission | (Preliminary Performance Review) |
| • Unemployment Compensation | (Preliminary Performance Review) |
| • Women's Commission | (Preliminary Performance Review) |
| • Personal Assistance Services Program | (Preliminary Performance Review) |
| • Contractor Licensing Board | (Preliminary Performance Review) |
| • State Rail Authority | (Preliminary Performance Review) |

Budget Overview

• Office of Explosives and Blasting	(Preliminary Performance Review)
• Waste Tire Fund	(Preliminary Performance Review)
• Real Estate Commission	(Preliminary Performance Review)
• Care Home Advisory Board	(Preliminary Performance Review)
• Capitol Building Commission	(Preliminary Performance Review)
• Records Management and Preservation Board	(Preliminary Performance Review)
• Public Employees Insurance Agency	(Preliminary Performance Review)
• Soil Conservation Committee	(Preliminary Performance Review)
• Board of Examiners in Counseling	(Regulatory Board Review)
• Board of Osteopathy	(Regulatory Board Review)
• Board of Examiners of Land Surveyors	(Regulatory Board Review)
• Board of Dental Examiners	(Regulatory Board Review)
• Board of Licensed Dietitians	(Regulatory Board Review)